

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY;
DEFENDERS OF WILDLIFE; ANIMAL LEGAL
DEFENSE FUND,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States of America; MARK T.
ESPER, in his official capacity as Acting Secretary of
Defense; LIEUTENANT GENERAL TODD T.
SEMONITE, in his official capacity as Commander
and Chief of Engineers, U.S. Army Corps of
Engineers; KEVIN McALEENAN, in his official
capacity as Acting Homeland Security Secretary;
DAVID BERNHARDT, in his official capacity as
Secretary of the Interior,

Defendants.

Civil Action No. 1:19-cv-00408 (TNM)

JOINT MOTION FOR SUPPLEMENTAL BRIEFING SCHEDULE

The parties hereby move the Court for a supplemental briefing schedule in relation to Defendants' Motion to Dismiss Plaintiffs' Amended Complaint. In support of this request, the parties submit the following:

1. On May 10, 2019, Defendants moved to dismiss Plaintiffs' Amended Complaint in this matter. *See* ECF No. 22. In that motion, Defendants sought dismissal of, *inter alia*, claims related to Defendants' alleged use of authority provided in 10 U.S.C. § 2808 to undertake barrier construction along the southern border.

2. Plaintiffs filed their opposition on May 31, 2019, *see* ECF No. 31, and Defendants filed their reply on June 17, 2019, *see* ECF No. 33.

3. At the time the parties filed their motion-to-dismiss briefs, the Secretary of Defense had not yet decided to undertake or authorize any construction projects under § 2808.

4. On September 3, 2019, the Secretary of Defense authorized eleven border barrier projects in California, Arizona, New Mexico, and Texas pursuant to § 2808. *See* Defs.' Notice, ECF No. 37.

5. To facilitate the Court's resolution of the pending Motion to Dismiss, the parties respectfully request the opportunity to file supplemental briefs to address whether or how the Secretary's recent decision affects the parties' arguments raised in the prior briefing. The parties further ask that the Court adopt the following briefing schedule.

- September 18, 2019: Defendants' Supplemental Brief;
- October 2, 2019: Plaintiffs' response to Defendants' Supplemental Brief; and
- October 9, 2019: Any reply by Defendants to arguments raised in Plaintiffs' brief, if necessary.

6. The parties agree that Defendants' Supplemental Brief and Plaintiffs' response thereto will be limited to no more than ten pages, and any reply by Defendants will be limited to five pages.

7. A proposed order is attached.

Dated: September 10, 2019

Respectfully submitted,

/s/ Brian Segee

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CENTER FOR BIOLOGICAL DIVERSITY, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States of America, *et al.*,

Defendants.

Civil Action No. 1:19-cv-00720 (TNM)

[PROPOSED] ORDER

Upon consideration of the parties' Joint Motion for Supplemental Briefing Schedule, it is hereby **ORDERED** that the Motion is **GRANTED**. The parties shall file supplemental briefs to address whether or how the Secretary of Defense's decision to authorize certain border barrier projects pursuant to 10 U.S.C. § 2808 affects the parties' arguments made in support of or in opposition to Defendants' Motion to Dismiss Plaintiffs' Amended Complaint.

It is furthered **ORDERED** that the parties shall adhere to the following briefing schedule and page limitations:

1. September 18, 2019: Defendants' Supplemental Brief not to exceed 10 pages;
2. October 2, 2019: Plaintiffs' response to Defendants' Supplemental Brief not to exceed 10 pages; and
3. October 9, 2019: Any reply by Defendants to arguments raised in Plaintiffs' brief, if necessary, not to exceed 5 pages.

SO ORDERED.

Dated: _____

TREVOR N. McFADDEN
United States District Judge